



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED
Release to Manager, HQ Determinations - Cincinnati

FILE

DATE: [REDACTED]

SURNAME [REDACTED]

Date: [REDACTED]

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

Facts:

You are organized as a non-profit corporation under the laws of [REDACTED]. Your articles of incorporation provide that you are "organized exclusively for charitable, educational, and (culturally) religious purposes."

Your governing body has ratified a document titled "Constitution of [REDACTED]" which provides for your internal governance in the manner of bylaws. The Constitution was adopted "in order to promote better community relations with other Indian tribes and non-Indians...."

Under Article I, Section 1, of the Constitution, the [REDACTED] is vested with the authority (among other things):

- a. To make all laws and regulations which they shall deem necessary and proper for the good of the Nation which shall not be contrary to Federal or [REDACTED] or to this Constitution;
- c. To make laws for the levy and collection of taxes for the purpose of raising revenue;
- d. To purchase lease, acquire by gift, take by devise or bequeath, acquire by eminent domain or otherwise acquire land ... that may be deemed beneficial to the [REDACTED]

Under Article II, Section 5, of the Constitution, the [REDACTED] Executive Office is empowered to take action on (among other things):

- a. Revocable permits, farm and grazing leases, oil, gas, and mineral, easements, and right of ways, subject to approval of the Council;
- f. To promulgate and enforce ordinances and codes governing law, order, and peace, health, safety, and general welfare, on land determined to be within [REDACTED] jurisdiction, subject to the laws of the states and approved by the [REDACTED] Council.

Under Article II, Section 8, of the Constitution, the duties of the Executive Office will consist of (among other things):

- a. The Principle Chief shall serve as the political representative for the people of the [REDACTED] and shall perform all of the duties pertaining to the office of the Principle Chief.

Article VI of the Constitution is concerns "[REDACTED] Membership" and provides that:

The Enrollment Ordinance of 1978 was developed by the Enrollment Committee of the [REDACTED] for the purpose of clearly defining the meaning of the [REDACTED] and membership of such persons in the [REDACTED]

Individuals whose families are recognized by the [REDACTED] Council as being [REDACTED] shall consist of the following:

- a. Individuals whose names appeared on either the 1875 or 1908 [REDACTED] membership list of the [REDACTED] and [REDACTED] or the [REDACTED], they or their descendants shall be eligible for enrollment, provided they prove direct lineage.
- b. Other individuals can qualify for membership if they show that their families were part of the [REDACTED] in 1721 or historical times and that their ancestors should have been listed on either the 1875 or 1908 [REDACTED] membership list.

In your application Form 1023, you describe your activities as follows:

To engage in any lawful act or activity for which corporations may be organized under the general corporation laws of [REDACTED]. Any profits made will be rolled over within the corporation to maintain growth.

In a document titled [REDACTED], you state:

The [REDACTED] would offer assistance to our [REDACTED] people and other

[REDACTED]

community project by means of a food pantry, clothing if necessary, and genealogy assistance and lineage research. Our future goal is to achieve federal acknowledgment so that our [REDACTED] people can better their lives with medical, schooling, and housing, and cultural benefits.

The [REDACTED] will maintain an office with regular office hours. The [REDACTED] office (Chief, Deputy Chief, and the administrative secretary/treasurer) will carry out the daily office duties which will include processing applications for membership and assisting members as well as potential members with membership issues and questions...

The [REDACTED] will promote [REDACTED] culture and traditions by means of [REDACTED] training classes for [REDACTED] language, traditions, and [REDACTED] arts and crafts.

The [REDACTED] are not a federally recognized entity. At this time there is an ongoing effort to bring all the [REDACTED] people together for the purpose of federal acknowledgement...

Because we cannot verify any lineage research done previously, we have been advised to do our own lineage research for all the members that we have. ... Each member will have to do their own family genealogy; we will only be responsible for the research of any [REDACTED] blood quantum. These blood quantum are not put on our membership cards, it will be put on each application for [REDACTED] purposes at a later time. Our rolls will be open for our members to aid in their own family genealogy research.

We hold monthly meetings for our members and potential members. These meetings are held to inform our members of any activity going on that concerns our process to achieve federal recognition for the [REDACTED]

In our letter of [REDACTED], we asked you to provide a detailed description of each of your activities, to describe the purpose of each activity, and to state the percentage of time and resources you will devote to each activity. In your undated response, postmarked [REDACTED] you replied:

Our activities include accepting membership into this organization by individuals completing an application form along with a lineage chart for genealogy purposes. Based on certain criteria ... an individual can receive a membership card without a blood quantum, if that individual can supply the necessary information. Later, after the bloodline lineage research has been done, their bloodline quantum is put in their file for the Bureau of Indian Affairs Dept. to verify that the lineage is correct to allow the individual to receive a [REDACTED] card

after Federal recognition is granted. Our genealogy base is not yet set up as we will need access to as many [redacted] rolls and the information that connects us to the [redacted] of historical times. We will also need some equipment to do this research such as computers, printers, microfiche readers, and researchers to do this work. It is not a requirement of the BIA or the BAR (Bureau of Acknowledgement and Research) for the researchers to be certified.... The BIA and the BAR ask only that the lineage research can be verified. This research must be done on each and every member file that we have. We cannot rely on the research of any other Indian band or individual person. This information will be made available to that member only and to the BAR and the BIA. We feel that this is personal information, and that it is not our place to make it known to the outside general public.

Other activities include fundraisers to help maintain our operations.... We are in the process of getting a cookbook published to raise funds for a project that will help our [redacted] children receive school supplies each year....

We have just started publishing a newsletter for our members and non-members who want to keep up on current news and activities of our band. The newsletter will help keep our members informed of any updates on federal recognition progress....

We are currently working on another project that will enable our [redacted] children to receive the education about their heritage about their heritage, culture, and traditions.... Research is now being done to determine the specific needs of the children....

We have future plans for a food pantry that will service our needy Western Cherokee people and the general public.... The food pantry project is currently not in operation, but we do have the regulations to set up such a project....

Law:

Section 501(a) of the Internal Revenue Code exempts from federal income taxation organizations described in section 501(c).

Section 501(c)(3) of the Code describes corporations, trusts, and associations that are organized and operated exclusively for charitable, educational, and other exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that, in order to be exempt as an organization described in section 501(c)(3), the organization must be both organized and operated exclusively for one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational," as used in section 501(c)(3) relates to (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 71-580, 1971-2 C.B. 235, concerns an organization formed by members of a particular family. The organization is organized for the purpose of preserving and studying the genealogical records of the family in order to perform religious ordinances in accordance with the precepts of the religious denomination to which family members belong. The organization's primary activity is the compilation of genealogical data on its family members. This data is then forwarded to the Church in order that deceased members who have not received the rites of the religious faith may vicariously be accepted into the religion. The ruling finds that the law of charity generally recognizes that the saying of mass or the conduct of similar religious observances under the tenets of a particular religion are of a spiritual benefit to all the members of that faith and to the general public. Any private benefit to a given family or individual that may result is regarded as merely incidental to the general public benefit that is served. Accordingly, the ruling holds that the organization is similarly accomplishing a charitable purpose by engaging in an activity that advances religion, and is, therefore, exempt under section 501(c)(3) of the Code.

Rev. Rul. 80-301, 1980-2 C.B. 180, concerns a genealogical society whose membership is open to all interested persons in a particular geographical area. The society provides instruction in genealogical research techniques to both members and the general public through monthly lectures. It distributes instructional manuals, sponsors tours of historical museums, donates books and other research materials on genealogy to public libraries, and conducts a free genealogical speakers bureau. The society does not conduct genealogical research for its members. Rather, its members research genealogies independently using the society's research materials. The ruling finds that the society is educating the individual and the community generally when it conducts lectures, sponsors public displays and museum tours, provides written materials on genealogical research, and compiles the area's pioneer history. Thus, the society's activities are educational within the meaning of section 1.501(c)(3)-1(d)(3) of the regulations. The ruling holds that an organization open to all persons in a particular area and which provides instruction in genealogical research techniques as described above qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 80-302, 1980-2 C.B. 182, concerns an organization formed to locate, acquire, restore, and preserve all available genealogical records of a particular family. Membership in the organization is limited to lineal or legal descendants of the family. The organization's primary activity is the compilation of genealogical data on its members. The data is recorded and documented, held for use by members, and presented to designated libraries. Copies of the genealogical data are made available for a fee to any interested individuals, generally family members, who request such data. The ruling finds that, while the compilation, publication, preservation, and distribution of genealogical data has some educational value, when these activities are primarily limited to one particular family the activities do not advance education to benefit the public interest. Any benefit to the general public is merely incidental to the private benefit accruing to family members. The ruling holds that an organization that conducts genealogical activities primarily for members of a particular family, under the circumstances described above, does not qualify for exemption under section 501(c)(3) of the Code.

The court in Callaway Family Association, Inc. v. Comm'r, 71 T.C. 340 (1978), held that a family association formed as a nonprofit organization to study immigration to and migration within the United States by focusing on its own family history and genealogy does not qualify for exemption under section 501(c)(3) of the Code. The association's activities included researching the genealogy of its members for the ultimate purpose of publishing a family history. The court stated that the association's genealogical activities were not insubstantial and were not in furtherance of an exempt purpose. Rather, they served the private interests of the members. Thus, the organization was not operated exclusively for exempt purposes.

Section 7871(a) of the Code and section 305.7871-1 of the regulations provide that Indian tribal governments will be treated as states for certain enumerated federal tax purposes.

The term "Indian tribal government" is defined under section 7701(a)(40) of the Code to mean the governing body of any tribe or group of Indians that is determined by the Secretary of Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions.

Rev. Rul. 60-384, 1960-2 C.B. 172, explains that a state or municipality itself, would not qualify as an organization described in section 501(c)(3) of the Code since its purposes are clearly not exclusively those described in section 501(c)(3).

Rev. Rul. 77-165, 1977-1 C.B. 21, explains that the three generally acknowledged sovereign powers of states are the power to tax, the power of eminent domain, and the police power.

Analysis:

One of your substantial activities is to conduct "bloodline lineage research" of your members in order to establish their descent from individuals whose names appeared (or should have appeared) on either the 1875 or 1908 membership list of the [REDACTED] you will provide the [REDACTED]

results of your research solely to your members and to the [REDACTED] for the ostensible purpose of gaining recognition [REDACTED]

[REDACTED] your Constitution is designed to allow you to exercise sovereign powers once federal recognition is finally obtained. For instance, the Constitution vests your [REDACTED] Council with such sovereign powers as the power to tax, the power of eminent domain, and the police power.

Since an [REDACTED] government exercises sovereign powers similar to those exercised by a state or municipality, its purposes are clearly not exclusively those described in section 501(c)(3) of the Code. Therefore, such [REDACTED] government cannot qualify for exemption under section 501(c)(3). It follows, then, that activities designed to obtain recognition as an [REDACTED] government do not serve exempt purposes within the meaning section 501(c)(3).

In conducting bloodline lineage research of your members, you are similar to the organizations described in Rev. Rul. 80-302 and in Callaway Family Association V. Comm'r. *supra*, which were denied exemption because they served the private interests of their members rather than the interests of the public. Like them, you collect and compile genealogical data on your members, hold the data for your members' use, and disseminate the data only to certain governmental agencies, such as [REDACTED]. Therefore, your research activities are for the private interests of your members, i.e., to establish their qualification as members of an Indian tribe.

You are unlike the organization described favorably in Rev. Rul. 80-301. That organization was open to the general public in a particular geographical area. In furtherance of its educational purposes, the organization provided instruction to the general public in genealogical research techniques, distributed instructional materials, sponsored tours and speakers, and compiled local histories. Unlike that organization, you do not provide instruction in genealogical research to the general public, and the results of your research are not readily available to the general public.

In addition, you are unlike the organization described favorably in Rev. Rul. 71-580. That organization conducted genealogical research for family members for the purpose of performing religious ordinances in accordance with the precepts of the religious denomination to which family members belong. Your bloodline lineage research is not conducted in furtherance of an exempt purpose, but for the private purpose of determining the blood quantum of each of your members in order to establish their descent from members of historical [REDACTED]. In that way, you hope to gain recognition from the federal government as an [REDACTED].

From the information you provided, it is apparent that your bloodline lineage research, conducted as part of your membership activities, is a substantial activity of yours. Although you also intend to conduct certain educational programs for [REDACTED] children and a food pantry, those activities are still in the planning and not yet operational. Since more than an insubstantial part of your activities is not in furtherance of an exempt purpose, you are not operated exclusively for exempt purposes as required by section 1.501(c)(3)-1(c)(1) of the

regulations. Furthermore, your activities serve a private rather than a public interest in violation of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Conclusion:

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED]
[REDACTED]
[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Manager, Exempt Organizations